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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

DOMINGO NAVAL et al.,

Plaintiffs and Respondents,

v.

ELENA DIRIGE,

Defendant and Appellant.

G050066

(Super. Ct. No. 30-2013-00689034)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County,  
Franz E. Miller, Judge. Affirmed.

Elena Dirige, in pro. per.; Law Offices of Harold W. Dickens, III and  
Harold W. Dickens III for Defendant and Appellant.

Rutan & Tucker, Heather N. Herd and Gerard M. Mooney, Jr., for Plaintiffs  
and Respondents.

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## INTRODUCTION

Plaintiffs Domingo Naval and his son, Jan Naval,<sup>1</sup> operated a restaurant in Newport Beach. In 2009, the Navals entered into an agreement to sell the restaurant to defendant Elena Dirige, based on an installment payment plan that would be completed by the end of September 2013. The Navals agreed to permit Dirige to immediately begin operating the restaurant, with the understanding that she would pay its expenses; arrange to have business accounts for, inter alia, sales taxes and utilities transferred to her name; and arrange to assume the lease agreement for the premises with the landowner.

Dirige began to operate the business and paid some of the expenses. By the end of September 2013, she had only paid a total of \$40,000 toward the purchase price of \$135,250, had not made efforts to have the restaurant's business accounts transferred to her name, and had not attempted to assume the lease agreement. Dirige also refused to surrender possession of the premises. The Navals filed an unlawful detainer action and prevailed.

Dirige appeals from the judgment entered after the trial court denied her motion to reclassify the case from a limited unlawful detainer action to an unlimited civil action. We affirm. Substantial evidence supported the trial court's finding that Code of Civil Procedure section 1161, subdivision 3 authorized the Navals' use of the unlawful detainer action to obtain possession of the premises held by Dirige. (All further statutory references are to the Code of Civil Procedure unless otherwise specified.)

## FACTS

The Navals jointly owned and operated a restaurant business known as Pizza Pete's located on Balboa Peninsula in Newport Beach; they acted as agents of one another. On October 1, 2009, on behalf of that business, Domingo entered into a

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<sup>1</sup> We refer to Domingo Naval and Jan Naval individually by their first names for clarity's sake and intend no disrespect. We refer to them collectively as the Navals.

commercial lease agreement with the owner of the property for the exclusive right to operate Pizza Pete's at its location in Newport Beach; the lease term ended on September 13, 2014.

Jan was involved in the day-to-day operations of the restaurant from October 2009 to June 2011. Jan's name is on several business accounts and licenses related to the restaurant, including with the state Board of Equalization for sales taxes, the gas company, the cable company, the City of Newport Beach, and the Orange County Health Department. Dirige, with whom Jan was in a "stormy" romantic relationship, had authorization to assist in the operation of the restaurant, with the authority to pay the business expenses including the rent.

In 2011, Dirige "ha[d] been hounding" Jan to sell the restaurant to her. Jan testified that Dirige had threatened him that if he did not sell the business to her, she would do "everything to make sure that [he] will fail with the business." Jan further testified that because their romantic relationship was coming to an end, and he "couldn't handle the fighting," he had agreed to sell the restaurant to her.

On June 8, 2011, acting on behalf of the business, Jan entered into a written agreement to sell the business to Dirige for a total purchase price of \$135,250 (the purchase agreement). The purchase agreement was "simple and bare bones." It provided that Dirige was to complete the sale and assume the lease and business accounts by the end of September 2013.

Jan and Dirige also entered into an oral agreement that, pending completion of the sale of the restaurant, Dirige would be able to use the leased premises to operate the business. They agreed that Dirige would be responsible for paying all of the expenses of the business and "for doing all things necessary to have whatever accounts put in her name, utilities, have the lease assigned or otherwise transferred to her as the lessee" by the end of September 2013. In order to take over the lease, Dirige needed to make an application to the Navals' landlord.

After the purchase agreement was signed, Dirige took over being in charge of the restaurant's operations. Although Jan ceased being in charge of the restaurant's operations, his name remained on the business accounts and licenses and Domingo's name remained on the lease. Dirige collected revenues and paid some expenses. (Dirige testified that after they had signed the purchase agreement, Jan sometimes paid the rent and she sometimes paid the rent and she occasionally paid the utilities.) Occasionally, Jan came to the restaurant to help Dirige and she paid him for his services.

Dirige testified it was her understanding when she entered into the purchase agreement that she had the right to occupy the premises and operate the business so long as she was not in default or in breach of the purchase agreement. She further testified it was her understanding from Jan that the only way she could be ejected or removed from the premises was if she breached the purchase agreement. Nevertheless, Dirige frequently referred to the restaurant as Jan's business, threatening him that "[i]f something happened with this business, it's [Jan's] a-s-s that's on the line," not hers.

Dirige paid Jan a \$30,000 downpayment and then made a \$10,000 payment a month later. She did not make any more payments for the purchase of the restaurant and thus failed to pay the entire purchase price by the end of September 2013 deadline. Dirige neither made an application to the Navals' landlord to take over the lease nor transferred the business accounts by the end of September 2013.

Jan received an invoice from the state Board of Equalization, stating that the restaurant had failed to pay \$31,228 in sales taxes. Jan and Dirige agreed that Jan owed approximately \$10,000 and Dirige owed approximately \$21,000 for the back taxes. Nevertheless, Dirige did not pay Jan the amount she owed. In September 2013, Jan paid the full amount of the invoice to avoid incurring a penalty because he was still named as the responsible party for the restaurant with the state Board of Equalization. As of March 2014, Jan had made payments for the restaurant's sales taxes since September 2013.

After Dirige failed to perform under the agreements, Jan went to Pizza Pete's to retrieve the keys from her. Dirige refused to give Jan the keys and told him that he would have to sue her if he wanted Pizza Pete's back. Jan authorized a three-day notice to pay purchase price or quit and a three-day notice to perform covenants or quit be sent to Dirige on November 15, 2013. As of March 2014, Jan and Domingo remained the owners of Pizza Pete's.

### PROCEDURAL HISTORY

In November 2013, Domingo and Jan, each as an individual and doing business as Pizza Pete's, filed a verified complaint for unlawful detainer against Dirige, based on claims for (1) "failure to perform covenant—termination of right to use premises"; (2) "failure to perform covenant—purchase price"; and (3) "failure to perform covenant—assumption of lease, business licenses and utilities." (Capitalization & boldface omitted.) In the complaint, the Navals prayed for judgment against Dirige, which included (1) "restitution of the Premises" and forfeiture of the purchase agreement by which Dirige held possession; (2) "damages for the unlawful detention of the Premises and resulting from [Dirige]'s breach of the [purchase] Agreement . . . , including holdover damages at the rate of \$144.00 per day" (the daily rental value of the property); and (3) costs of suit to the extent allowed by law.

Dirige did not answer the verified complaint. In December 2013, a default judgment for unlawful detainer in favor of the Navals was entered and the trial court issued a writ of possession.

In January 2014, Dirige filed an ex parte application for a temporary restraining order to stay execution of the writ of possession on various grounds, including that the trial court lacked jurisdiction to proceed with the matter as an unlawful detainer pursuant to section 1161. She requested that the execution of the writ of possession be stayed until the trial court could hear the motion to quash service of summons and to

vacate the default judgment against her. In her motion to quash and to vacate the default judgment, Dirige argued the action should be reclassified, pursuant to sections 396, subdivision (b) and 403.040, from an unlawful detainer action to an unlimited civil action. The court granted Dirige's application to stay execution of the writ pending the hearing on her motion to quash and to vacate the default judgment.

On February 24, 2014, the trial court issued an order denying Dirige's motion to quash service of summons and denying her motion to reclassify the matter from an unlawful detainer action to an unlimited civil action. As to the motion to reclassify the action, the court's minute order stated: "Moving Party claims she was vendee in possession and not tenant at will, so she can't be evicted via [unlawful detainer] [citations]; this is in the nature of an attack on the pleading, and plaintiff's allegations (tenant at will) are [e]ntitled, a[t] least, to weight/deference [citation]; appears sales agreement was rescinded, which deprives defendant of vendee in possess[ion] status [citation]; not clear defendant was ever a vendee, as she could not assign master lease without 'lessor's' written consent; defendant attacked the original action on the ground no 3-day notice was given (judicial estoppel)." The court granted Dirige's motion to vacate the default and default judgment.

Dirige filed a verified answer to the complaint, and trial was held in March 2014. At the close of the Navals' case, Dirige made a motion to dismiss for nonsuit, arguing that the action could not be brought as an unlawful detainer action because (1) there was no lessor-lessee relationship between the Navals and Dirige and (2) the dispute was over a contract of sale rendering the three-day notices ineffective. Dirige also argued that only Domingo (not Jan) was a lessee of the premises, and, therefore, the Navals did not establish she was a sublessor.

Following a brief bench trial, the trial court issued an oral statement of decision, in which the court found, inter alia, that "under [section] 1161, subdivision 3, plaintiffs have the ability to obtain possession of the premises held by Ms. Dirige,

alternatively, on the theory that she is a subtenant, a licensee, or an agent. [¶] Thus, when Ms. Dirige breached the agreement, a part of which is she could remain on the premises and run the business until and unless she breached the agreement—which, again, I find she did by not paying the full purchase price within the required time, that they had the ability to seek unlawful detainer against her. [¶] So the court will order judgment for the plaintiff—plaintiffs—and against Ms. Dirige.”

The trial court entered judgment in favor of the Navals. Dirige appealed. Dirige filed a petition for writ of supersedeas and request for an immediate stay. In June 2014, a panel of this court denied the petition for writ of supersedeas and request for immediate stay.<sup>2</sup>

## DISCUSSION

### I.

#### STANDARD OF REVIEW

“The trial court’s decision on a reclassification motion is reviewed by this court for an abuse of discretion. (*Walker v. Superior Court* [ (1991)] 53 Cal.3d [257,] 272; [citation].)” (*Ytuarte v. Superior Court* (2005) 129 Cal.App.4th 266, 276.) “In applying the abuse of discretion standard, we determine whether the trial court’s factual findings are supported by substantial evidence and independently review its legal conclusions.” (*Valley Crest Landscape Development, Inc. v. Mission Pools of Escondido, Inc.* (2015) 238 Cal.App.4th 468, 482.)

This appeal follows a bench trial and the court’s issuance of an oral statement of decision. “Where the court issues a statement of decision, it need only recite

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<sup>2</sup> Two days before oral argument, Dirige filed a motion seeking leave to file a late appellant’s reply brief. We granted the motion. Dirige’s reply brief contains arguments that do not relate to the issue presented in this cause—whether the statutory criteria for seeking an unlawful detainer action under section 1161, subdivision 3 have been satisfied.

ultimate facts supporting the judgment being entered. [Citation.]” (*People v. Orange County Charitable Services* (1999) 73 Cal.App.4th 1054, 1071.) “No objections were made to the statement of decision, and no party brought omissions or ambiguities in it to the trial court’s attention, so we will infer the trial court made findings favorable to the prevailing party on all issues necessary to support the judgment.” (*Valley Crest Landscape Development, Inc. v. Mission Pools of Escondido, Inc.*, *supra*, 238 Cal.App.4th at p. 482.) “We review the trial court’s express factual findings, and any implied findings, for substantial evidence.” (*Apex LLC v. Sharing World, Inc.* (2012) 206 Cal.App.4th 999, 1009.) “We review legal issues, such as statutory interpretation, under a de novo or independent standard. [Citations.] ‘In theory, a determination is one of ultimate fact if it can be reached by logical reasoning from the evidence, but one of law if it can be reached only by the application of legal principles.’” (*Ibid.*)

## II.

### THE TRIAL COURT DID NOT ERR BY REFUSING TO RECLASSIFY THIS ACTION AS AN UNLIMITED CIVIL ACTION.

Dirige contends the trial court abused its discretion by denying her pretrial motion to reclassify this action from an unlawful detainer action to an unlimited civil action under section 403.040, and rejecting her renewed argument at the bench trial that the case should have been reclassified as an unlimited civil action. For the reasons we explain, we find no error.

## A.

### *An Unlawful Detainer Proceeding Claiming \$25,000 or Less in Damages Is a Limited Civil Action.*

“The designation of a case as either a limited or an unlimited action has significant implications because the available relief and applicable procedures differ as to each. Most significantly, if a case is designated as a limited civil case, the court has no



authority (i.e., jurisdiction) to award a judgment in excess of \$ 25,000. [Citations.] In contrast, a court presiding in unlimited civil actions may enter a judgment that falls within the range of a limited civil action and/or that could have been entered in a limited civil court. [Citations.] [¶] In addition to limitations on the amount of the verdict, a court in a limited civil action cannot determine the title to real property. [Citation.] Moreover, a plaintiff in a limited civil action may not obtain a permanent injunction and has fewer rights for declaratory relief than a litigant in an unlimited case. [Citation.] Discovery is also circumscribed in limited civil cases. [Citation.]” (*Ytuarte v. Superior Court, supra*, 129 Cal.App.4th at pp. 274-275.)

Section 86, subdivision (a)(4) provides that “[a] proceeding in forcible entry or forcible or unlawful detainer where the whole amount of damages claimed is twenty-five thousand dollars (\$25,000) or less” is a limited civil case within the statutory scheme.

## B.

*Substantial Evidence Supported the Trial Court’s Findings That Dirige Was an Agent, or Alternatively a Subtenant, of the Navals, Within the Meaning of Section 1161, Subdivision 3; Therefore, She Is Subject to Unlawful Detainer Proceedings.*

Dirige does not contend this action involved a claim for damages in excess of the statutory limit of \$25,000. Instead, she argues this action does not qualify as an unlawful detainer action. She challenges the trial court’s conclusion that she was subject to unlawful detainer proceedings because she was, alternatively, an agent, a subtenant, or a licensee within the meaning of section 1161, which provides in relevant part: “A tenant of real property, for a term less than life, or the executor or administrator of his or her estate heretofore qualified and now acting or hereafter to be qualified and act, is guilty of unlawful detainer: [¶] . . . [¶] 3. When he or she continues in possession, in person or by subtenant, after a neglect or failure to perform other conditions or covenants of the lease

*or agreement under which the property is held, including any covenant not to assign or sublet, than the one for the payment of rent, and three days' notice, in writing, requiring the performance of such conditions or covenants, or the possession of the property, shall have been served upon him or her, and if there is a subtenant in actual occupation of the premises, also, upon the subtenant. Within three days after the service of the notice, the tenant, or any subtenant in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform the conditions or covenants of the lease or pay the stipulated rent, as the case may be, and thereby save the lease from forfeiture; provided, if the conditions and covenants of the lease, violated by the lessee, cannot afterward be performed, then no notice, as last prescribed herein, need be given to the lessee or his or her subtenant, demanding the performance of the violated conditions or covenants of the lease. [¶] A tenant may take proceedings, similar to those prescribed in this chapter, to obtain possession of the premises let to a subtenant or held by a servant, employee, agent, or licensee, in case of his or her unlawful detention of the premises underlet to him or her or held by him or her.” (Italics added.)*

The record supports the finding that Domingo signed the lease of the restaurant's premises with the landowner on behalf of the business he ran with Jan. Therefore, substantial evidence supported the finding the Navals qualified as “tenant[s]” seeking to obtain possession of premises within the meaning of section 1161, subdivision 3.

It is undisputed Dirige continued to occupy the restaurant's premises after she failed to perform the conditions of her agreements with the Navals—and only by those agreements was she permitted to occupy the premises. Specifically, she did not pay the full purchase price for the restaurant, she did not pay all of the expenses attendant to the operation of the restaurant (which the Navals had to pay), and she did not arrange to have the business accounts and the lease transferred to her name, by the end of September 2013 deadline. Notwithstanding her omissions, Dirige refused to surrender possession

back to the Navals, who remained liable as tenants under their lease agreement with the landowner and as owners of the restaurant.

The only remaining criterion for an unlawful detainer action under section 1161, subdivision 3 is the requirement that Dirige's relationship to the Navals be that of subtenant, employee, agent, or licensee, within the meaning of that code section. In its oral statement of decision, the trial court stated: "It is difficult for the court to determine exactly what that relationship between Mr. Naval and Ms. Dirige was based in large measure by the fact that the agreement itself was—the written agreement was certainly simple and bare bones. [¶] I do believe there was a meeting of the minds between the two of them that she could and would remain there running the business pending completion of the sale. [¶] I find no meeting of the minds that she could remain there afterwards if the sale were not completed in a timely fashion."

The trial court explained it could not conclude that Dirige was a servant or employee under the facts of the case as she did not receive some sort of salary for her efforts operating the restaurant during the term of the purchase agreement and the Navals did not receive the net profits from the operation of the restaurant. The court ultimately concluded the facts supported the finding that Dirige was, in the alternative, an agent, a subtenant, or a licensee of the Navals within the meaning of section 1161, subdivision 3. The court's conclusions as to Dirige's status as an agent or subtenant were supported by the law and substantial evidence.

1.

Substantial Evidence Supported the Finding Dirige Was the Navals' Agent.

Civil Code section 2295 provides: "An agent is one who represents another, called the principal, in dealings with third persons. Such representation is called agency." Case law has established: "'An agent 'is anyone who undertakes to transact some business, or manage some affair, for another, by authority of and on account of the latter, and to render an account of such transactions.'" [Citation.] "The chief

characteristic of the agency is that of representation, the authority to act for and in the place of the principal for the purpose of bringing him or her into legal relations with third parties. [Citations.]” (*McCollum* [v.] *Friendly Hills Travel Center* (1985) 172 Cal.App.3d 83, 91 . . . .)” (*Woolley v. Embassy Suites, Inc.* (1991) 227 Cal.App.3d 1520, 1531, italics omitted.) The primary test of an agency relationship is the right of control. (*Cox v. Kaufman* (1946) 77 Cal.App.2d 449, 452; see *Kim v. Sumitomo Bank* (1993) 17 Cal.App.4th 974, 983.) An agency relationship may be implied from the circumstances and the parties’ conduct. (*Michelson v. Hamada* (1994) 29 Cal.App.4th 1566, 1579; *Pagan v. Spencer* (1951) 104 Cal.App.2d 588, 592-593.)

In its oral statement of decision, the trial court stated: “Depending on effectively whether it was the Navals’ business or her business, [Dirige] could be an agent of theirs on the premises. And I think the better view, based upon all of the evidence of the relationships of the parties and how they acted with regard to one another, I can find she was—there is sufficient evidence to find she was an agent of theirs charged with running the business and that, effectively, as a result of that, she essentially paid some, but not all of the expenses. But, apparently, whatever cash there was, there is no indication she did not have access to or benefit from the cash. I would infer that, in essence, there was definitely consideration for whatever actions one would conclude that she did on their behalf.”

Substantial evidence supported the trial court’s express and implied findings of an agency relationship. From June 2011 until Dirige breached her agreements with the Navals in September 2013, she assumed operation of the restaurant on the premises, which the Navals leased, and used their existing business accounts. She paid some (not all) of the business expenses and then was able to retain the net profits of the operation in consideration of her efforts. Because she operated the restaurant without being the owner of the restaurant, the tenant of the property, or the responsible party on the restaurant’s business accounts, the record shows she undertook to manage the

operation of the restaurant, standing in the Navals' place, pending the completion of the purchase agreement and the transfer of the lease and the restaurant's business accounts to her name. Dirige's failure in any dealings with third parties on behalf of the restaurant reverted back to the Navals, such as when she underpaid the sales taxes for the restaurant during the purchase agreement period. Jan paid the delinquent amount in order to avoid a penalty. By doing so, Jan demonstrated the Navals' ultimate responsibility for, and, thus, right to control, the restaurant. Jan testified that Dirige would repeatedly tell Jan that if something happened to the business, it was his "ass on the line" and it was his business. As a result, the trial court did not err by concluding that the Navals properly brought this action as an unlawful detainer action under section 1161, subdivision 3.

2.

Substantial Evidence Also Supported the Finding Dirige Was a Subtenant of the Navals, Within the Meaning of Section 1161, Subdivision 3.

Even if substantial evidence did not support an agency relationship between Dirige and the Navals, substantial evidence supported the trial court's finding that Dirige was the Navals' subtenant to trigger the application of section 1161, subdivision 3.

Section 1161 provides in part, "[a]s used in this section, tenant includes any person who hires real property except those persons whose occupancy is described in subdivision (b) of Section 1940 of the Civil Code," which involves occupancy of hotels, motels, and dwelling units and is inapplicable to this case. A tenancy is a contractual relationship, express or implied, between a landlord and a tenant, conveying a possessory interest in real property. (Friedman et al., Cal Practice Guide: Landlord-Tenant (The Rutter Group 2015) ¶ 2:3, p. 2A-5.) "[A] sublease is a transfer of only a portion of the tenant's estate, with the latter retaining a reversionary interest." (*Vallely Investments v. BancAmerica Commercial Corp.* (2001) 88 Cal.App.4th 816, 823.) "Whether a contract confers a mere license or instead creates a tenancy is a question of law. If the contract

gives *exclusive possession* of the premises as against all the world—including the owner—it is a lease. Conversely, if it merely confers a privilege to occupy the premises under the owner, it is a license.” (Friedman et al., Cal Practice Guide: Landlord-Tenant, *supra*, ¶ 2:32, p. 2A-14.)

In its oral statement of decision, the trial court determined Dirige qualified as a subtenant under the facts of this case, stating: “One could conclude that during the pendency of the sale, since the Navals held the tenancy under the lease, that she was a subtenant of theirs, the theory being that, effectively, as part of the consideration for the transaction, that she was allowed to be a subtenant of the premises.”

Here, there is no dispute the Navals transferred their possessory interest in the property, upon which Pizza Pete’s operated, to Dirige so that she could operate the restaurant herself, pending her satisfaction of all the conditions of the purchase agreement. Jan occasionally assisted Dirige in operating the restaurant, but only at Dirige’s invitation. Jan and Dirige each testified about his respective understanding that Dirige would only be ejected from the premises if and when she breached the purchase agreement. Thus, substantial evidence also supported the finding that Dirige’s relationship to the Navals was that of a subtenant.

Because substantial evidence supported the application of section 1161, subdivision 3, on the ground Dirige was an agent or, alternatively, a subtenant of the Navals, we do not need to analyze the trial court’s finding that Dirige might qualify as a licensee of the Navals as well.

### C.

#### *Dirige Was Not a Vendee in Possession Because the Purchase Agreement Did Not Involve the Purchase of Real Property.*

Dirige argues section 1161, subdivision 3 is inapplicable because she was a vendee in possession, not an agent or tenant, and as such could not be subjected to an unlawful detainer action. In support of her argument, she primarily cites cases in which

the defendant defaulted in the context of the sale of real property, not the sale of a business operating on leased property.

For example, Dirige cites *Greene v. Municipal Court* (1975) 51 Cal.App.3d 446, 451, in which the appellate court stated: “A vendee in possession of land under a contract of sale [of real property] who has defaulted in the payment of an installment of the purchase price, is not subject to removal by the summary method of unlawful detainer.” She cites *Goetze v. Hanks* (1968) 261 Cal.App.2d 615, 617, in which the court stated that a vendee in possession in the context of a sale of real property is not subject to unlawful detainer proceedings. Dirige also cites *Francis v. West Virginia Oil Co.* (1917) 174 Cal. 168, 171, a case set in the context of a sale of real property, in which the court held, “[a] vendee in possession is not a tenant in any sense of the word, and only a tenant may be sued under the first subdivision of section 1161” and the “[f]ailure of performance of his part of the contract of sale by the vendee in possession does not make him a tenant.” These cases are inapposite because they involve a contract for the sale of real property.

One case cited by Dirige, *Marvell v. Marina Pizzeria* (1984) 155 Cal.App.3d Supp. 1, 12, from the appellate department of the Los Angeles Superior Court, applied the above cited authorities to a context similar to the one in this case. The court there held: “While it is true that *Goetze* and *Francis* involved contracts of sale of *fee interests* in real property, while in the case at bench the business sale involved a leasehold as one of the assets being conveyed through an escrow, as to which possession was given during escrow, we are of the opinion that these factual differences do not require or allow a different legal analysis or conclusion. [¶] Accordingly, we are of the opinion that the court below erred in finding that appellant occupied the legal status of ‘conditional licensee’ or ‘tenant at will,’ and in granting respondents relief under the unlawful detainer statute.” (*Ibid.*, fn. omitted.)

We do not need to decide whether we agree with *Marvell v. Marina Pizzeria*'s extension and application of the above cited vendee in possession authorities because it is factually distinguishable from the instant case in that the reviewing court did not analyze whether substantial evidence supported the finding the defendant was an agent or subtenant within the meaning of section 1161, subdivision 3. That case was based on whether the trial court erred by finding that the appellant qualified as a conditional licensee or had a "tenancy at will" within the meaning of section 1161, subdivision 1. It did not address whether the appellant qualified as an agent or a subtenant with the meaning of subdivision 3 of section 1161.

#### DISPOSITION

The judgment is affirmed. Respondents shall recover costs on appeal.

FYBEL, J.

WE CONCUR:

MOORE, ACTING P. J.

ARONSON, J.